

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 19- 19 - 06869 CA 01 -15

CIVIL DIVISION

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

**VERIFIED PETITION FOR WRIT OF MANDAMUS FOR PRODUCTION OF PUBLIC  
RECORDS UNDER THE FLORIDA PUBLIC RECORDS ACT**

1. This is an action seeking a writ of mandamus to compel the disclosure and release of nonexempt records improperly withheld from Petitioner by Respondent City of Homestead despite a proper request for said records under the Florida Public Records Act, FS. 119 et al.

**THE PARTIES, JURISDICTION AND VENUE**

2. Petitioner, Dr. James Eric McDonough (hereafter "McDonough"), is a resident of Miami-Dade County, Florida.

3. Respondent City of Homestead (hereafter "CITY") is a Florida municipal corporation located in Miami-Dade County, Florida. CITY possesses the public records sought by McDonough.

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to Article I, Sec. 24 of the Florida Constitution and Florida Public Records Act, FS. 119 et al. This Court has jurisdiction to issue a writ of mandamus under Article V, sec. 5(b) of the Florida Constitution.

5. Venue is appropriate since McDonough is a resident of Miami-Dade County and CITY is located in Miami-Dade County.

### **CONDITIONS PRECEDENT**

6. McDonough has complied with all conditions precedent to the bringing of this action.

### **GENERAL ALLEGATIONS**

7. On Monday, February 18, 2019, McDonough emailed CITY Clerk, Elizabeth Sewell, requesting copies of CITY records related to leave taken, between April 9, 2013 and April 9, 2015, by Homestead Police Department officer Alejandro Murguido. See **Exhibit A**.

8. On February 19, 2019, CITY acknowledged the records request. See **Exhibit B**.

9. Since CITY's acknowledgement of receipt of the request for public records, there has been no further correspondence from CITY.

10. CITY prominently post the contact information of its records custodian, Elizabeth Sewell, in the place where records may be requested. See **Exhibit C**.

11. FS. 119.07(1)(a) holds:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

12. FS. 119.11(1) holds:

Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

13. FS. 119.12 holds:

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied;  
and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

14. The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, Florida courts have held that the only delay permitted in producing records "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA August 28, 2014) (citing *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985)).

15. The narrow scope of the records requested by McDonough would not justifiably take almost three weeks to retrieve, nor would it take such time to review and remove any allegedly exempt material. Furthermore, "unjustifiable delay to the point of forcing the requestor to file an enforcement action is by itself tantamount to an unlawful refusal to provide public records in violation of the Act." *Id.* at 984.

16. The request was filed almost three weeks prior to the filing of this action, therefore more than five (5) business days have elapsed, and McDonough is entitled an immediate hearing and to his reasonable costs of enforcement due to CITY's unlawful refusal to produce public records.

### **LEGAL CLAIMS**

17. CITY is an agency as defined in FS. 119.011(2).

18. McDonough has made a valid request to copy the requested public records.

19. CITY has a clear non-discretionary and statutory duty under FS. 119.07(1)(a) to permit inspection and copying of public records.

20. McDonough has a clear legal and constitutional right to inspect and receive copies of all nonexempt public records under Article I, Sec. 24 of the Florida Constitution and the Florida Public Records Act, FS. 119 et al.

21. The records requested by McDonough are not exempt from disclosure.

22. CITY has failed to respond within a reasonable time to McDonough's records request, creating an unjustified delay.

23. McDonough has no other adequate remedy at law.

24. McDonough seeks and is entitled to an order to show cause or alternatively a writ of mandamus directed to CITY, requiring CITY to provide the requested records.

25. McDonough seeks and is entitled to an immediate hearing under FS. 119.11(1).

26. McDonough seeks and is entitled to recover his reasonable costs of enforcement under FS. 119.12(1)(a) and has met the requirements thereof under FS. 119.12(1)(b).

WHEREFORE, McDonough respectfully requests that this Honorable Court enter an Order granting the requested Writ of Mandamus, set an accelerated hearing, require the CITY to prove the reasonableness of its delay, award McDonough reasonable costs of enforcement, and for such other relief as is just and proper under the circumstances.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*

32320 SW 199<sup>th</sup> Ave

Homestead, FL 33030


Phone: (571) 245-5410

Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com)



**VERIFICATION PAGE**

As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.

  
DR. JAMES ERIC MCDONOUGH, Affiant

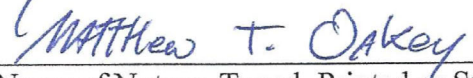
STATE OF FLORIDA


COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 8<sup>th</sup> day of March 2019 by

Dr. James Eric McDonough

  
Signature of Notary Public – State of Florida

  
Name of Notary, Typed, Printed or Stamped

Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



## **EXHIBIT A**



Eric McDonough &lt;phd2b05@gmail.com&gt;

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**Records Request Murguido Leave**

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Eric McDonough &lt;phd2b05@gmail.com&gt;

Mon, Feb 18, 2019 at 6:45 PM

To: Elizabeth Sewell &lt;ESewell@cityofhomestead.com&gt;

Dear Elizabeth,

I am requesting all records, documents, leave slips, etc. ad infinitum related to any leave taken by Murguido between April 9th, 2013 and April 9th 2015. This includes sick leave, vacation leave, holiday leave, administrative leave and comp time.

Also requested is any leave or travel for training or any other official reason.

Thank you

Dr. James Eric McDonough

## **EXHIBIT B**





Eric McDonough &lt;phd2b05@gmail.com&gt;

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**PRR JAMES ERIC McDONOUGH - Acknowledgement of Request**

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**Julissa Chavez** <JChavez@cityofhomestead.com>

Tue, Feb 19, 2019 at 11:41 AM

To: "phd2b05@gmail.com" &lt;phd2b05@gmail.com&gt;

Cc: Elizabeth Sewell &lt;ESewell@cityofhomestead.com&gt;, Liz Palau &lt;LPalau@cityofhomestead.com&gt;, Monica Herrera &lt;MHerrera@cityofhomestead.com&gt;

Good Morning Mr. McDonough,

Your request has been received in the City Clerk's Office on **02/18/2019** and forwarded to the appropriate department(s) for processing. As soon as we receive a response from them, we will contact you.

*I have attached a copy that was stamped as received for your records.*

**PRR attached** - Requesting all records, documents, leave slips, etc. ad infinitum related to any leave taken by Murguido between April 9th, 2013 and April 9th 2015. This includes sick leave, vacation leave, holiday leave, administrative leave and comp time. Also including any leave or travel for training or any other official reason.

Kind Regards,

**Julissa Chavez**

Deputy Clerk

Office of the City Clerk

100 Civic Court Homestead, FL 33030


Office: 305-224-4440 &amp; Fax: 305-224-4459

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**PRR JAMES ERIC McDONOUGH - Murguido Leave.pdf**

3/7/2019

Gmail - PRR JAMES ERIC McDONOUGH - Acknowledgement of Request

 57K

## **EXHIBIT C**



**CITY OF HOMESTEAD**

# **PUBLIC NOTICE**

**The City of Homestead Custodian of  
Records contact information is as  
follows:**

Elizabeth Sewell, MMC  
City of Homestead City Hall  
Office of the City Clerk  
100 Civic Court  
Homestead, FL 33030

Email Address: [esewell@cityofhomestead.com](mailto:esewell@cityofhomestead.com)  
Telephone No.: (305) 224-4442  
Fax No.: (305) 224-4459